

Remarks

New claim 24 corresponds with original claim 1 but includes the additional limitation that the person's face is flushed in an air stream of predetermined composition. New claim 37 includes the limitations of original claims 11 and 13. Claim 13 was indicated as being allowable in the Office Action dated July 1, 2003. New claim 43 is directed to the apparatus disclosed in the embodiment of Figure 7 of the present application.

Arguments

Claims 1-2 and 11-12 are rejected under 35 USC 102(b) as being anticipated by Albarda (US 4,314,564). It is the Examiner's position that Albarda teaches each and every limitation recited in claims 1-2 and 11-12.

Claim 24 which corresponds with original claim 1 requires the limitation that the person's face is flushed in an air stream of predetermined composition. This feature is not taught by Albarda. In the method and apparatus disclosed in the reference, the person to be tested exhales through a mouthpiece into a breathing tube 1. This tube is flushed with ambient air by an air conveyor or blower 41 over an air line 40 *prior to the measurement*. It is therefore maintained that the method of claim 24 patentably distinguishes over the teachings of Albarda.

Accordingly, for the reasons set forth above, it is respectfully requested that the rejection of the claims under 35 USC 102(b) be withdrawn as Albarda fails to teach each and every limitation set forth in the claims.

Claims 1, 3-9, and 11-12 are rejected under 35 USC 102(e) as being anticipated by Nawata et al (US 5,531,225). It is the Examiner's position that Nawata et al teach each and every limitation recited in claims 1, 3-9 and 11-12.

It is Applicant's position that new claim 24 also defines over the teachings of Nawata et al for the following reasons. In Nawata et al, exhaled air is drawn into an inlet 10a by means of a suction pump 16 and is exhausted through an exhaust port 17. Also, in this case, there is no flushing of the face of a person that is being tested and, therefore, the invention as defined in claim 24 does not lack novelty as compared with the Nawata et al disclosure.

For the reasons set forth above, it is respectfully requested that the rejection of the claims under 35 USC 102(e) be withdrawn as Nawata et al fail to teach each and every limitation set forth in the claims.

The limitations of original claims 11 and 13 have been combined to form new claim 37. Claim 13 was indicated to be

allowable in the previous Office Action. Allowance of claim 37 is requested.

With respect to new claim 43, the limitations set forth in this claim correspond with the embodiment shown in Figure 7. The art of record fails to teach the apparatus shown by this figure and defined in claim 43.

Conclusion

In view of the foregoing arguments and amendments, Applicant believes that the application meets all applicable statutory and regulatory requirements. Accordingly, Applicant respectfully requests allowance of new claims 24-43. If the Examiner has any questions regarding this amendment and/or believes that a telephone interview would assist in the advancement of this case to allowance, he/she is invited to contact the undersigned Agent for Applicant.

Respectfully submitted,

by Michele K. Yoder
Michele K. Yoder
Reg. No. 41,562
Agent for Applicant

JAMES RAY & ASSOCIATES
2640 PITCAIRN ROAD
MONROEVILLE, PA 15146-3309
TELEPHONE (412) 380-0725
FACSIMILE (412) 380-0748